

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

HAI NGUYEN,

Plaintiff,

vs.

CITY OF VANCOUVER, VANCOUVER  
POLICE DEPARTMENT, and JOHN DOE,  
Vancouver Police Officer,

Defendants.

No. 3:22-cv-5077-JHC

ORDER DENYING DEFENDANT CITY  
OF VANCOUVER'S MOTION FOR  
SUMMARY JUDGMENT

**I.**

**INTRODUCTION**

THIS MATTER comes before the Court on Defendant City of Vancouver's Motion for Summary Judgment ("Motion"). The Court has considered the pleadings filed in support of and in opposition to the Motion and the file herein. Being fully advised, the Court DENIES the Motion.

1 **II.**

2 **BACKGROUND**

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4 Plaintiff filed this lawsuit on February 4, 2022, asserting a cause of action under 42

5 U.S.C. § 1983 against (1) the Vancouver Police Department (“VPD”), (2) the City of

6 Vancouver (“City”), and (3) a “John Doe.” Dkt. #1.<sup>1</sup> On February 11, 2022, a process server

7 delivered a copy of the summons and complaint to Logan Cannon, a records supervisor at the

8 Vancouver Police Department’s West Precinct. Dkt. #4. On February 22, 2022, a process

9 server delivered a copy of the summons and complaint to Brent Waddle, who at the time was

10 the City of Vancouver’s Interim Risk Manager. Dkt. #6. The parties do not dispute that neither

11 Cannon nor Waddle have ever been designees of the City of Vancouver’s mayor or city

12 manager, meaning neither have ever been authorized to accept service of process on behalf of

13 the City of Vancouver. *See* RCW 4.28.080(2) (Municipalities in Washington may be served

14 only by delivery of the summons and complaint “to the mayor, city manager, or, during normal

15 office hours, to the mayor’s or city manager’s designated agent or the city clerk thereof.”).

16 On April 15, 2022, the City filed an answer in which it did not assert the affirmative

17 defense of insufficient service of process. Dkt. # 9. On May 5, 2022, exactly 90 days after

18 Plaintiff filed his complaint, the City filed an amended answer under Federal Rule of Civil

19 Procedure (“FRCP”) 15(a)(1)(A), asserting the defense for the first time. Dkt. # 11.

20 The City now moves for summary judgment, arguing that Plaintiff did not commence the

21 action within the limitations period due to his failure to effectuate proper service of process.

22 Dkt. # 13.

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25 <sup>1</sup> The Court dismissed the Vancouver Police Department from this action on May 16, 2022, because it is not a legal entity that can be sued. Dkt. # 18.

1 **III.**

2 **ANALYSIS**

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4 “Section 1983 does not contain its own statute of limitations.” *Butler v. Nat’l Cmty.*

5 *Renaissance of Cal.*, 766 F.3d 1191, 1198 (9th Cir. 2014). “Without a federal limitations

6 period, the federal courts apply the forum state’s statute of limitations for personal injury

7 actions, along with the forum state’s law regarding tolling, including equitable tolling, except to

8 the extent any of these laws is inconsistent with federal law.” *Id.* “But, in borrowing a state

9 statute of limitations for a federal cause of action,” federal courts are “to ‘borrow no more than

10 necessary.’” *Id.* (quoting *West v. Conrail*, 481 U.S. 35, 39 (1987)). Because Washington is the

11 forum state, the Court applies Washington’s three-year limitations period for personal injury

12 torts under RCW 4.16.080(2). *See Lien Huynh v. Chase Manhattan Bank*, 465 F.3d 992, 997

13 (9th Cir. 2006) (explaining that the forum will apply its own state’s statute of limitations

14 barring exceptional circumstances and constitutional restrictions); *see also* Restatement

15 (Second) of Conflicts of Law § 6; § 142 (1988).

16 Under federal law, a claim accrues “when the plaintiff knows or has reason to know of

17 the injury which is the basis of the action.” *Lukovsky v. City and Cnty. of San Francisco*, 535

18 F.3d 1044, 1048 (9th Cir. 2008). Plaintiff alleges his injuries occurred on February 5, 2019.

19 Dkt # 1. His cause of action thus began to accrue as of that date, triggering the three-year

20 statute of limitations, which ran until February 5, 2022. The City argues that because Plaintiff

21 failed to effectuate proper service within 90 days of filing his complaint on February 4, 2022,

22 he did not commence his lawsuit. Dkt. # 13 at 5. It cites RCW 4.16.170, which states in

23 pertinent part, “the plaintiff shall cause one or more of the defendants to be served ... within

24 ninety days from the date of filing the complaint...if...following filing, service is not so made,

25 the action shall be deemed to not have been commenced for purposes of tolling the statute of

1 limitations.” *Id.* The City further argues that Plaintiff’s action is now time barred because  
 2 more than three years have passed since his cause of action accrued and an action was never  
 3 commenced. *Id.* at 7–10.<sup>2</sup>

4 Contrary to the City’s arguments, the service requirements of FRCP 4(m), instead of  
 5 RCW 4.16.170, apply here. The Ninth Circuit has held that “a federal court borrowing a state’s  
 6 time period for filing suit brought under federal law should not also borrow the state’s time  
 7 limits for serving the complaint.” *S.J. v. Issaquah Sch. Dist. No. 411*, 470 F.3d 1288, 1293 (9th  
 8 Cir. 2006); *see also Dumarce v. Christensen*, No. CV-05-419-FVS, 2007 WL 2572315, at \*2  
 9 (E.D. Wash. Sept. 5, 2007) (“RCW 4.16.170 does not apply to a § 1983 claim commenced in  
 10 federal court...[a]lthough the statute of limitations is borrowed from state law, service of  
 11 process is governed by the Federal Rules of Civil Procedure.”).

12 The City cites *Whidbee v. Pierce Cnty.*, 857 F.3d 1019, 1023 (9th Cir. 2017), in support  
 13 of its argument that RCW 4.16.170 should apply instead of Fed. R. Civ. P. 4(m). Dkt. # 13 at  
 14 6. But in *Whidbee*, the plaintiff first brought his action in state court, and the defendants  
 15 removed the action to federal court after the state statute of limitations had expired. The Ninth  
 16 Circuit held that removal to federal court did not extend or revive the expired three-year  
 17 limitations period. *Id.* This case is distinguishable from *Whidbee* because Plaintiff filed his  
 18 action in federal court in the first instance. It thus more resembles *S.J.* and *Dumarce*.  
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 21 <sup>2</sup> The law does not support Plaintiff’s arguments that his attempts to serve the nonlegal entity of  
 22 the Vancouver Police Department somehow tolled the limitations period under RCW 4.16.170. *Cf.*  
 23 *Sidis v. Brodie/Dohrmann, Inc.*, 117 Wash. 2d 325, 329–30, 815 P.2d 781 (1991) (“A plaintiff who fails  
 24 to serve each defendant risks losing the right to proceed against unserved defendants if the served  
 25 defendant is dismissed”). Nor does it support Plaintiff’s argument that the City somehow waived its  
 defense of insufficient service. Plaintiff may be correct that the City strategically omitted its affirmative  
 defense of insufficiency of process from its original answer, only to include it in its amended answer  
 upon expiration of the 90 days. But as far as the Court can tell, no law clearly supports the proposition  
 that such conduct amounts to waiver of the defense.

1 District courts have broad discretion to extend time for service under Rule 4(m). In  
2 *Henderson v. United States*, 517 U.S. 654, 61 (1996), the Supreme Court observed that Rule  
3 4's time period for service "operates not as an outer limit subject to reduction, but as an  
4 irreducible allowance." *See also Mann v. American Airlines*, 324 F.3d 1088, 1090 (9th Cir.  
5 2003) ("Rule 4(m) explicitly permits a district court to grant an extension of time to serve the  
6 complaint"). In making extension decisions under Rule 4(m), a district court may consider  
7 factors such as the statute of limitations bar, prejudice to the defendant, actual notice of the  
8 lawsuit, and eventual service. *Efaw v. Williams*, 473 F.3d 1038, 1041 (9th Cir. 2007).

9 Here, the Court finds good cause under Rule 4(m) for Plaintiff's failure to serve the City  
10 with process within 90 days of the filing of this lawsuit. Factors supporting this finding  
11 include: (1) the City's omission of the affirmative defense of insufficiency of process in its  
12 original answer; and (2) the City waiting until the expiration of the 90-day period to assert the  
13 defense. Factors supporting the extension decision include: (1) the limitations period; (2) the  
14 lack of any apparent prejudice to the City; (3) actual notice of the lawsuit by the City; and (4)  
15 Plaintiff's apparent good-faith efforts to serve the City within the 90 days.

16 Accordingly, the Court DENIES the Motion. Plaintiff may have until June 30 to serve  
17 the City with process.

18 DATED this 8th day of June, 2022.

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22 HONORABLE JOHN H. CHUN  
23 UNITED STATES DISTRICT JUDGE  
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